IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-08-2004

CORAM

THE HONOURABLE Mrs.JUSTICE PRABHA SRIDEVAN

W.P.No 13706 of 2004

and W.P.No.13707 of 2004

, 14069 to 14072,14200,16892, 16998,14102, 14544 , 14681, 14714,17970, 16730, 18359, 22055, 14991, 14488, 12946, 15083 ,15300,18845,15190,21317, 14821, 16821,16988,16989, 20622, 20623, 203 89 to 20392, 19930, 19971, 20897, 21974, 14104, 14110, 14114, 14491, 13781, 15861 to 15865 17044,17484, 6295 & 13783, 14581, 15130, 15161, 17260, 17651, 16238, 16239, 14190, 14148 to 14151, 14169 to 14172, 1 6085, 14500, 18969 to 18971, 19218, 18972, 19110 /2004 and etc. batch
and
W.P.M.P.Nos.16093, 16094, 16096, 16097, 16585 to 16588, 16781, 16782, 20012, 20151, 20152, 16633, 17230, 17408, 17447, 17448, 21371, 19792 , 21866, 26670, 26671, 17779, 17780, 17160, 15073, 17901, 18171, 2257 3, 18030, 17578, 19907, 19908, 20143, 20145, 25741, 24830, 24833, 248 29, 24832, 24538, 24541, 24544, 24547, 24539, 24542, 24545, 24548, 23 988, 24043, 25162, 26535, 23628, 27490, 16636, 16646, 16652, 17165, 1 6196, 16198, 18834 to 18838, 20216, 20768, 7446, 17281, 17282, 18314, 17954, 17991, 20499, 20996, 19174, 19175, 16766, 16699, 16702, 16705 , 16709, 16700, 16703, 16706, 16708, 16730, 16733, 16736, 16739, 1673 1, 16734, 16737, 16740, 19052, 19053, 17173, 22766 to 22769, 23136, 2 3137, 22770 and 23006 of 2004

In W.P.No.13706/2004 :

M.Kumarasamy College of Engineering
represented by its Secretary K.Ramakrishnan
127, Main Road
Thalavapalayam
Karur 639 113. ... Petitioner

-Vs-

1.The Government of Tamil Nadu
represented by its Secretary
Higher Education Department
Chennai 600 009.

2.All India Council for Technical Education
represented by its Chairman
I.G.Sports Complex
I.P. Estate

New Delhi 110 002 .... Respondents

Prayer: Writ Petition No. 13706 of 2004 has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of respondents relating to the order of the first respondent in letter Nos. 2197/J2/2004 dated 04-0 5-2004 and quash the same and direct the second respondent herein to consider the applications of the petitioner in Nos. 0670 of 2004-05 and 127 of 2004-05 dated 28-10-2003 for introduction of new courses viz., B.E. (Civil), B.E. (Applied Electronics and Instrumentation) and M.B.A. With an annual intake of 60 seats in each course and additional intake in B.E. (Mechanical) from 60 to 120 seats, B.E.( Electronics and Communication) from 60 to 120 seats and M.C.A. From 40 to 120 seats during the academic year 2004-05 in the petitioner college viz., M.Kumarasamy College of Engineering, Thalavapalayam, Karur District without insisting upon the N.O.C. of the State Government.

!For petitioners : Mr. K. Doraiswami,Senior Counsel for M/s. Muthumani Doraisami, M/s. V. Ayyadurai, V.B. Perumalraj, Mr. R. Krishnamurthy, Senior Counsel for Mr. S. Thankasivan, Mr. R. Krishnamurthy, Senior Counsel for A. Jinasenan, Mr. R. Krishnamurthy, Senior Counsel for M/s. G. Revathy, S. Mothilal, R. Prashanthi, M/S.K. Selvaraj, Sugirdha Selvaraj, Mr. R. Parthasarathy for M/s. Sathish Parasaran, M/s. Suresh Kumar, V. Balaji, M/s. R. Natarajan, M/s. S. Giridharan, S. Sankar Ganesh, P. Godson, M/s. R. S. Jeevarathanam, Madhuri Donti Reddy, S. Kavitha, M/s. C. Selvaraju, S. Mani, T. Sellapandian, M/s. N. Paul Vasantha Kumar, K. Vijayakumar, M/s. V. Bharathidasan, M.M. Sundaresh, B. Singaravel, M/s. K.J. Rebbello, S. Elambharathi, S. Deepika, M/s. M. Sureshkumar, R. Manikandan, M/s. V. Sanjeevi, E. Muthukumarasamy.

^For respondents: For respondents:Mr.R. Muthukumaraswamy
Addl. Advocate General
Assisted by
Mr. V. Karthikeyan,
Addl. Govt. Pleader for
State in all thepetitions
: Mr.Vijay Narayan
for AICTE in all the
petitions
:COMMON ORDER

The huge buildings, bearing the name of some college or educational institution stand stark and empty dotted along the Tamil Nadu Highways, like skeletons, mute witnesses to the desolation created in the field of education by the myopic approach and arbitrary orders of the authorities including AICTE and the State and the failure on the part of many educational institutions to maintain a consistent standard of excellence.
2. The Vice Chancellor of the Anna University goes on record to say that over 20,000 Engineering seats will remain vacant this year, because of colleges where standards are low. Alongside is the report of Tamil Nadu Colleges taking the lead in getting accreditation. Allegations of human rights

violation are made against institution A or B. So what is the truth about the institutions in Tamil Nadu? What role has the State played in ensuring state of excellence and in promoting the endeavour to spread education?

3. In all these writ petitions, the petitioners question the necessity for an existing institution to obtain a no objection certificate ('NOC' in short) for introduction of new courses or for increase in the sanctioned intake. Section 3 of the All India Council for Technical Education ('AICTE' in short) Act deals with powers and functions of the Council. Section 10 (k) deals with the grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

4. According to the learned senior counsel and the counsel appearing for the petitioners Regulation 8(4) itself was beyond the regulation making power of AICTE. But Regulation 8(4) has been held to be valid by the judgment reported in SOUTHERN INDIA EDUCATIONAL TRUST V. THE ALL INDIA COUNCIL FOR TECHNICAL EDUCATION (2003 WLR 561). The petitioners further submit that provision of Regulation 8(9) alone is applicable or relevant, insofar as applications for introduction of new courses or programmes or for increase in intake capacity are concerned. To further insist upon an NOC is not warranted.

5. The Additional Advocate General would contend that Sub-Regulation 9 cannot be torn out of context. When the Regulations are seen as a whole it would be apparent that NOC is required even for introduction of new course or for increase in intake.

6. The Counsel for AICTE also submitted that the Regulations are valid and no approval can be granted without NOC. Regulation 2 deals with Applicability of the Regulations. Regulations 2(b) and 2(c) deal with the introduction of a course and approval of existing intake and for increase in intake. Regulation 4 deals with requirement of grant of approval and subregulation 1 reads thus:
"(1) After the commencement of those regulations,-
(a)..
(b) no course or programme shall be introduced by any technical institutions, University including a deemed University or University Department or College; or
(c) ..
(d) no approved intake capacity of seats shall be increased or varied;
except with the approval of the Council."

7. Regulation 5 deals with forms for applications and specifically states that forms of application for increase in intake and for introduction of new course shall be made in the form specified in Subregulation 2 and shall be accompanied by the documents called for. Subregulation 2(d) of Regulation 5 deals with introduction of additional course or increase in intake and degree level institution. We are only concerned with this because the impugned orders relate to introduction of new courses or increase/variation in intake in existing courses.

8. Regulation 6 deals with conditions for grant of approval and it says that applications under Subregulation 1 shall be considered upon fulfillment of the

following conditions:
"(i) The financial position of the applicant shall be sound for investment in developed land and in providing related infrastructural and instructional facilities as per the norms and standards laid down by the Council from time to time and for meeting the annual recurring expenditure;
(ii) the courses or programmes shall be conducted as per the assessed technical manpower demands;
(iii) the admissions shall be made according to the regulations and directions of the Council for such admissions in the respective technical institution or university;
(iv) the tuition and other fees shall be charged within the overall criteria as may be laid down by the Council;
(v) the staff shall be recruited as per the norms and standards specified by the Council from time to time;
(vi) the Governing Body in case of private technical institutions shall be as per the norms as specified by he Council.
(vii) any other conditions as may be specified by the Council from time to time."

9. Regulation 7 deals with submission of application and it states that every application, which is submitted for approval shall be made in triplicate with a copy each to the concerned agencies as per the provisions of these regulations. Regulation 7(4) deals with the applications from the registered society for a trust for approval at technical institution functioning on the date of commencement of the Regulations for setting up of new courses and the intake capacity.

10. Regulation 8(1) deals with only applications for approval of new technical institutions since it uses the phrase "in which the new technical institution is to be started". Subregulations 2 and 3 relate to applications which deals with new technical institutions. Regulation 8(4)(e) is important and will be dealt with later.

11. If the regulations are read as a whole it is clear from Regulation 4 that without the approval of the Council, no new course can be started nor increase in intake of the students or variety in existing course. Regulation 5 specifically includes applications for increase in intake or introduction of courses. Regulation 6 refers to every (Emphasis given) application under Regulation 4(1) which covers application made to the Council for introduction of new courses / programmes or for increase in intake. Regulation 7 also uses the words □every application□ for approval of the Council which can only be understood as application for every situation mentioned in Regulation 5(1). Regulation 7(4) refers to the manner in which applications should be made for introduction of new courses or for variation in intake capacity. It is true that Regulation 8(1) refers to new technical institutions and the clauses mentioned thereafter viz., subregulations 2 and 3 also seem to indicate applications for commencement of new technical institution. But when we come to subregulation 4, subregulation 4( e) reads thus:

"It shall be necessary for the applicant to obtain 'No Objection Certificate" (NOC) from the concerned State Government/UT, without which the application

shall stand rejected. In case of proposals for establishment of new institute, the Council shall not invite the applicant for hearing, if the NOC of the State Government is not received in the Council on or believe the cut-off-date, specified by it. It shall also be desirable for the applicants who are called for hearing to obtain NOC from the concerned affiliating University and produce the same before the Hearing Committee."

12. If the submissions of the petitioners are to be accepted that the application for NOC is necessary only where new institutions are started then the phrase "in case of proposals for establishment of new institution" need not be used. Therefore, it is clear that the second and third sentences in the above extract apply to applications for approval of establishment of new institute, but the first clause of Subregulation 4(e) of Regulation 8 applies to all applications whether it is for approval of establishment of new institutions or approval of increase in intake or approval of introduction of new course. As regards subregulation 8, it refers to Form I and therefore, it can be related to subregulation 2(a) of Regulation 5, which deals with applications for starting technical institutions. It is in this context that subregulation 9 has been introduced and it reads thus:
"In case of applications for introduction of new courses or programme or for increase in the intake capacity of seats in any institution approved by the Council, the information about additional requirement of infrastructural, and instructional facilities only shall be required to be furnished by May 15."

13. We should also see the statutory forms in which such applications are to be made.
"Approval process for introduction of additional courses/variation in intake of existing courses/extension of approval of the institutions
"The Council has decided that the following criteria will be strictly followed while processing the applications/proposals:
(a) The application shall not be processed by AICTE without the No Objection Certificate (NOC) from the concerned State Govt./UT Administration for each proposal/application. The NOC must be received by the concerned Regional Office of AICTE by prescribed date."

14. On a harmonious reading of all the regulations the conclusion is that the Council has decided that NOC from the State is necessary for all the categories of application stipulated in Regulation 5. The following observation from 2003 W.L.R.561 (cited supra) are relevant.

" 15. As pointed out by the learned counsel for the AICTE, when the State Government/the University attempted to usurp the powers of the AICTE, rightly did the AICTE act by taking exception to the same by filing writ petition and questioning the propriety of what the State Government/the University did. That was at a time neither the State Government nor the University had any say in the matter. On its own the AICTE now wants to involve the State Government, which is in the know of things with regard to the necessity for starting new colleges, new courses, increasing the number of seats, etc., and by no means can it be said that the AICTE has abdicated its powers. It only seeks the assistance of the State Government and wants details."

15. Subregulations 8 and 9 must be read together. Subregulation 8 barring 8(4)(e) deals with new institutions and subregulation 9 deals with application of new courses and increase in intake. Regulations do provide for obtaining an NOC even in cases where new courses are started or intakes is sought to be increased. The AICTE has also framed the National Calendar for the year. It was urged on behalf of the petitioners that the clause 6 in the National Calendar itself is invalid since it insists upon production of NOC, contrary to Regulation 9. Clause 6 reads thus:
"The application "not recommended" by the State Govt. shall not be processed by the Council. The NOC of State Government should be received within the cut off date (31-12-2003). In case the State Govt. NOC is not received by the due cut off date, AICTE shall consider the application for further processing."
Since it has been held that the production of NOC applies to the applicants like the petitioners also, the National Calendar must be held to be in conformity with the regulations and cannot be quashed.

16. However, if the NOC is not furnished within the stipulated time, the AICTE has reserved to itself the power to go ahead and decide whether the approval should be granted or not. It is only if the State does "not recommend", the application given by the institution that the AICTE does not take the next step. The National Calendar also provides for a date within which the NOC should be given.

17. The petitioners have been fighting a long litigation and it must be remembered that in all these matters the time factor is very crucial. If the petitioners are not entitled to the NOC it is one thing. But if the petitioners are entitled to it which is given belatedly they cannot draw the benefit of the NOC and if the application is rejected improperly or unreasonably then also the institutions suffer. This is the second rejection by the State. The first rejection was challenged by all the petitioners and the Division Bench of this Court by its order in W.P.Nos.645 of 2004 etc.. batch dated 22-04-2004 quashed all the rejection orders by the State on the ground that they are all stereotyped and there was no application of mind.
"The impugned orders in all these writ petitions are liable to be set aside on the ground that they are stereo-typed orders passed without application of mind to the specific request of each of the individual applicants for grant of NOC either for increase in intake or establishment of a new college or additional course, etc. For the said reason, we are inclined to set aside the impugned orders in all the writ petitions.
... The first respondent is directed to dispose of the application of the writ petitioners and pass orders for grant of NOC for the academic year 2004-05 on or before 5-5-04 positively and forward the same to AICTE before the said date. In the event the orders are not passed as directed above, it is open to AICTE to consider the request of each of the writ petitioners for the increase in intake or for additional courses, etc., and process the applications further on merits. In such event, AICTE shall process and dispose of the applications of the writ petitioners on or before 5.6.04 so as to enable the institutions to admit the students or to start the new course or college in the event of AICTE granting permission."

The Division Bench directed the respondents to reconsider the matter and pass orders thereon within a time frame.

18. Originally, the cut off date for granting of NOC was fixed as 31-12-2003. Some institutions which had got approval from AICTE for new courses applied for variation of intake i.e. they varied the intake in other courses so that the introduction of the new course would not result in increase of total sanctioned strength. The State Government had granted an NOC on their application on 15-01-2004 beyond the cut off date. The Division Bench by its order dated 28-04-2004 quashed the NOCs. The following passage of the order is extracted.

"For all the above reasons, we are not inclined to accept the grievance expressed by the petitioners in each of the petitions seeking for a direction to the "AICTE" to inspect the institution and to process further on the basis of "NOC". The "NOC" issued by the State Government cannot be taken into consideration by AICTE, as it was passed after the cut off date and as well as without there being any specific application made by the individual applicant within the cut off date and also no such applications are pending before the "AICTE". As the issue raised in all these writ petitions arises for each academic year, we are inclined to direct the State Government to strictly adhere to the schedule prescribed by the "AICTE for receiving the application and to consider the same and pass orders within the cut off date and also to communicate the said order within the date prescribed for the same. As the Regulation provides "AICTE" for considering the applications for grant of sanction of the additional seats or additional courses in the event "NOCs" are not received within the cut off date, viz., 31.12.2003, it would be fair and proper for the State Government to dispose all the applications seeking for "NOC" well in advance before the last cut off date and communicate the same to the "AICTE" so as to enable the "AICTE" to process further. Communication of " NOC" on the last date, would certainly disable the "AICTE" for considering those applications received by it either for intake or for additional courses or new colleges."

19. Some of the petitioners herein were enumerated in the Annexure to the order dated 15-01-2004. It was submitted on behalf of the petitioners that even if the validity of the provision is upheld they would still be able to show that they have been rejected enmasse and arbitrarily. According to them, the order passed in W.P.5628 of 2004 batch dated 28-02-2004 will not affect their right in the present writ petitions. Therefore, the impugned orders in each of the 71 institutions were perused. The manner in which the respondent has applied its mind, is disappointing to put it mildly.

20. In Preeti Srivastava (Dr) v. State of M.P., ((1999) 7 SCC 120), the Supreme Court dealt with the role of State in the field of education as follows:

(Emphasis supplied)

"Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union

legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government."

21. The Supreme Court also referred to some of the many factors which affect the standard of education in an institution,
{1) the calibre of the teaching staff;
(2) a proper syllabus designed to achieve a high level of education in the given span of time;
(3) the student-teacher ratio;
(4) the ratio between the students and the hospital beds available to each student;
(5) the calibre of the students admitted to the institution;
(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
(7) adequate accommodation for the college and the attached hospital; and
(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.
(Emphasis supplied)
22. Some observations made in Islamic Academy of Education v. State of Karnataka, [2003 (6) SCC 697) are relevant for the purpose of this case since one of the reasons for which the NOC is refused is that it is not necessary to increase the intake in a particular institution in view of the vacancy position or since there are already vacancies in the particular discipline in the various colleges in the District, to allow the commencement of a new course or increase of the intake is not warranted.

"Local needs would vary from State to State. Even development of a backward area may be a local need. Absence of good educational institutions in a particular area may also be a local need. The State may, in pursuit of its policy for the development of the people, consider it expedient to encourage entrepreneurs for establishing educational institutions in remote and backward areas for the benefit of the local people. Local needs, therefore, cannot be defined only with reference to the State as a unit. ?
Although local needs, thus, may have to be determined keeping in view the factors enumerated therein but it must also be noticed that no essentiality certificate is required to be given by the State in relation to engineering and other professional colleges. While laying down the law based on interpretation of a constitution as well as a judgment, we cannot take a myopic view and hold that "local needs" must be referable to the medical education."
Therefore, we must understand this to mean that the local needs are relevant even with regard to engineering and professional colleges and not only to medical colleges.
(Emphasis supplied)
23. In T.M.A. Pai Foundation v. State of Karnataka((2002) 8 SCC 481 ) the Supreme Court has referred to the University Education Commission headed by Dr S. Radhakrishnan and extracts the following from the report submitted by this Commission:
"University autonomy.-Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important

factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their population and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe: 'More light', or that of Ajax in the mist 'Light, though I perish in the light.'

* * *

The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.

Liberal education.-All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education.''

They specifically note that State aid was not to be confused with State control. It was observed that the regulatory measures are necessary while establishing an educational institution. The maintenance of proper academic standard, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. And that in the case of private unaided institutions there has to be maximum autonomy in the day to day administration. Therefore, the role of State, standard of education, local needs, state aid vis a vis State control are important factors for the State to bear in mind. The following sentences are also relevant.

(Emphasis supplied)

"An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money."

The State must remember that its role in this area, may at best be a regulatory role, definitely not a deterrent role. The impugned orders failed to satisfy the standard of reasonableness.

24. Both in the earlier Division Bench judgment and now it is evident that the respondent has issued its rejection of the NOC so close to the cut off date that it leaves the petitioners with no option but to have one whole year laid to waste.

25. In Padfield V. Minister of Agriculture Fisheries and Food (1968 I All ER 694) it was observed:
"Parliament conferred a discretion on the Minister so that it could be used to promote the policy and objects of the Act which were to be determined by the construction of the Act; this was a matter of law for the court. Though there might be reasons which would justify the Minister in refusing to refer a complaint, his discretion was not unlimited and, if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere."

26. The Division Bench of this Court directed the respondent to consider the issue of NOC giving valid reasons therefor. It is thereafter that these impugned orders have been passed and the petitioners counsel undertook the arduous task of taking me through each individual impugned order. In some cases the respondent has even ignored the fact that the applications were made for two subjects and has passed the order in respect of only one subject. The refusal falls in two categories.
27. Category A:
Where Vacancy is the reason for rejection:
If the application is for a course where there are vacancies in the District in which the College is situated then the respondent rejects the applications on the ground that there are vacancies in the District in which the College is situated and therefore, the application is not approved and therefore, NOC cannot be granted. The statistics may show that students are desirous of joining that particular college and for that particular discipline. The particular college may have filled up their intake in the previous year in a particular course and applied for increase in intake. The particular college may have a very low degree of vacancy on the whole and applied for new course. The particular college may have a high degree of vacancy. It is true that the vacancy position of each college is set out in a tabular form. But not even in one case, the respondent has attempted to study the vacancy position in the district vis-a-vis the vacancy position in the college. The phraseology used while rejecting the application on the ground of vacancies in other colleges in the District is almost identical. Wherever it is found that there is a vacancy in a particular discipline in the colleges functioning in the district, then regardless of the fact that there is no vacancy in the applicant college in the sanctioned intake, the decision of the respondents is to refuse grant of No Objection Certificate on the ground that there is no need. This does not take into account the relevant facts of the individual case. For example, the particular college may have 60 sanctioned seats for Mechanical Engineering and in the previous year, all the seats may have been taken up by the students and when the petitioners apply for increase in the intake, it is rejected because in the colleges in and around the applicant college, there are vacancies in Mechanical Engineering. The respondents do not appear to have noted the possibility that, may be, the petitioners offer better facilities by way of faculty and amenities to the students and therefore, even though there may be vacancies in the adjoining colleges, students may readily come forward to join the applicant college if the intake is increased. In any event, in all those cases where there is a vacancy in a particular discipline in the colleges in the district in which the applicant college is involved, the following order is passed.

"It is, therefore, obvious that there is no scope for starting additional courses in the branches applied for by the petitioner college/ institution. In view of the above ground realities, the Government considers that there is no need to grant 'No Objection Certificate'."
This order is repeated without any variation in case after case. It is extremely doubtful if the respondent has even applied his mind to the "ground realities". The other phrase that is used in many of the cases of adequacy of vacancies, it is difficult to understand the meaning of "adequacy of vacancy". The reason for not granting may be increase in vacancy position. But what is "adequacy in vacancy"? Does it mean that it is desirable to have some seats vacant and that the limit of vacancy is reached? Perhaps, the respondent means increase in vacancy, We do not know. Using catch phrases like "ground realities" and "adequate vacancies" will not suffice.
(Emphasis supplied)
28. Category B:
Where rejection is for other reasons:
In cases where in the entire District there are no vacancies in a particular subject or cases where in the entire District the particular subject is not offered in any of the Colleges, the respondent gives other reasons. But these reasons are repetitive. If the reasons genuinely exist then the State has the right to refuse. But the manner in which stock reasons are given in each and every case of Category B makes one look at the rejection with suspicion.

29. It cannot be just coincidence that each and every petitioner before the Division Bench, which passed the order dated 22-04-2004, whose application was rejected on policy grounds, has again met with rejection. Not even one of those petitioners has obtained NOC. It is not suggested that all the petitioners deserve to have their applications granted in their favour. All that the authority has to do is to exercise his discretion reasonably. There must be a reasoned order, which means an order which shows that from the materials before it the authority has found and given reasons for its conclusion. There can or may be another view, but that will not justify judicial interference. But if the materials, the reasons and the conclusion cannot be correlated the fact that some reasons are given will not make it a " reasoned order."

30. As observed in 1968 (I) All ER 694 (cited supra) the paragraph extracted above the intention of the authority appears to be to frustrate the petitioners' attempt or to frustrate the purpose for which AICTE has been founded that is to provide for the co-ordinate development of education and promotion of qualitative improvement of such education and in relation to planned quantitative growth. If this is the case this Court has justification to interfere in exercise of power of judicial review. It is clear from the National Calendar that even the Council has provided for a contingency where no certificate is given. After all, as K. Sampath, J., in the SIET case observed, the AICTE has in exercise of its powers decided to seek the assistance of the State. The AICTE can always decide not to require the NOC of the State. So it is open to the AICTE to ignore State's failure (not refusal) to grant NOC and proceed with the matter.

31. The decision in SRM College (2004 AIR SCW 1997) where the Supreme Court

held that the colleges cannot bypass the State which has to give the Essentiality Certificate and directly seek the MC1 approval, cannot apply to this case in view of clause(6) in National Calendar.

32. By interim directions of this Court, the AICTE has has already inspected the institutions, so all that remains is grant/rejection of approval.

33. The Additional Advocate General took great pains to explain each order with reference to the college itself and the colleges in the district. The assistance given by him in these matters deserves special mention. Rightly the matter was placed before the Court not as if this is an adversarial litigation, but to help the Court in arriving at the correct decision.

34. As observed earlier, none of the petitioners whose applications had to be reconsidered by orders of the Division Bench, have succeeded in obtaining NOC. The Government wants to pursue "its policy decision" but has camouflaged it by giving some "reasons".

35. The scope of judicial review has been explained in STATE OF U.P. V. JOHRI MAL (2004 AIR SCW 3888)as follows:

"29. In Wade's Administrative Law, 8th edition at pages 33-35, it is stated: "Review, legality and discretion:

...
" Judicial review thus is a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body, as happens when on appeal, the Court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. ... Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the Court requiring the issue of the licence. If administrative action is in excess of power (ultra vires), the Court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it. The minister or tribunal or other authority has in law done nothing, and must make a fresh decision. "

36. As regards the State's role, the Division Bench observed in H.E. T.C. Educational Society v. State of Tamilnadu (2003(3)CTC 113) as follows:

"42. Government of States/Union Territories must reconcile themselves to the fact that professional education in the fields of Dentistry, Medicine and Engineering being covered by the Dentists Act, Indian Medical Council Act and AICTE Act, their role is a very limited one. While considering the application for grant of certificate regarding desirability and feasibility of the location, their approach should not be a negative one of seeking to find some reason or other to reject the request.

43. The State Governments, who for want of resources are unable to establish new professional colleges or increase capacity in existing ones, should not, by forming any preconceived notions come in the way of new institution being established by those who do not seek Government funding and are eligible to establish new institutions under the qualifying criteria prescribed by the Professional bodies under those enactments, and are able to satisfy the other criteria prescribed by the Dental or Medical Council.
45. The decision of the State Government in those matters and the reasons therefor while constituting relevant material, need not be regarded as final by the Central Government, as the final decision to grant or not to grant permission to establish the institution, has to be made by the Central Government. That power of the Central Government cannot be exercised by the State Government at the very threshold by treating the State's refusal to grant the certificate regarding desirability and feasibility as final and as precluding any further consideration of the application by the Central Government. It will of course be open to the Central Government to agree with the reasons given by the State Government, and decline to grant permission. But before doing so the Central Government should apply it's mind to the reasons given by the State Government."

37. The impugned orders passed by the respondents have been examined individually. The Additional Advocate General took great pains with the help of the records, that not all the petitioners deserve to get a NOC. It was submitted inter alia that while considering vacancy position at Chengalput it must be remembered that Chengalput, Kancheepuram and Chennai are so close to each other that the vacancy position of one district alone cannot be taken into account. It was also pointed out that when the vacancy position for a particular subject is very high in the District and the particular college which applies for the NOC has not been able to fill up even the sanctioned intake in that subject and has asked for revision of intake, then there is no purpose to be served in granting an NOC. Similarly, where the vacancy position in the entire district is high for a particular college and that particular college wants to start a new course and has not been able to fill up even up to 80% of the total sanctioned intake, then the College cannot really justify its application for NOC and when the reasons for the rejection are, Laboratory not being in accordance with the AICTE norms or lack of teachers then also the rejection is justified. There cannot be any two opinions that in cases such as the ones described by the Additional Advocate General rejection alone would be the proper course. The question is, do the impugned order reveal this kind of mental exercise on the part of the respondent with regard to each discipline or each institution? They do not. The impugned orders must ex facie justify themselves by giving reasons. The reasons which are absent in the orders cannot be supplied by oral arguments or by affidavits. So the reasons given by the Additional Advocate General may be rooted in facts, but they cannot be accepted.

38. It was held in MOHINDER SINGH GILL V. CHIEF ELECTION COMMISSION (1978 I SCC 405) that,
"... validity (of an order) must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

39. A few of the apparent errors will be pointed out:
(a) When the application is by a women's college the NOC is refused on the ground that there are vacancies of the subject, in that particular district, without application of mind whether the vacancy in a co-educational college is at all relevant when the application is on behalf of women's college.
(b) when the application is for three subjects which may be either variation in intake or for the commencement of new course and the impugned order relates itself only to one or two and silent about the others, then there is non-application of mid.
(c) Sometimes the rejection is on account of failure to recruit staff but even at the stage of approval by the AICTE, all that is required is identification of staff and production of consent letters. This shows non-application of mind .
(d) Some of the specific cases will be referred to show that the rejections clearly show non-application of mind:
(i) In W.P.No.17484 of 2004, the applicant has virtually no vacancy in 4 out of the 5 existing courses. In Information Technology alone there is a 50% vacancy. The applicant asks for commencement of two new courses and increase of intake in two courses where it is filled up to the maximum.
In W.P.No.18445 of 2004, in only one subject out of the four courses that the applicant offers, the vacancy is low. In all the others it is about 50% or more. The petitioners ask for commencement of two new courses.
In W.P.No.18359 of 2004 the petitioner has more than 75% vacancy in the four courses that it offers. It has applied for starting additional courses. The reason given in all the cases is the vacancy in the district. The College which has filled up almost its entire sanctioned intake and the College which has filled up only 25% of the sanctioned intake are treated equally.
(ii) Similarly, in W.P.NO.18297 of 2004, the petitioner has only two vacancies out of a sanctioned intake of 420, and it applies for starting additional courses in three subjects and increase in intake in one. The reason given is, "It is therefore obvious that there is no real need for starting any additional course .... etc.".
(iii)In W.P.No.16085 of 2004, five disciplines are dealt with on a district-wise basis of which the vacancy position is very high in three subjects; in one subject, for the fifth subject no college in the District offers the subject. The particular college asks for starting the course which is not offered by anyone in that District. It has asked for reduction in two subjects and increase in one subject. This is rejected on the ground of "It is therefore, obvious etc... ".

(iv) In W.P.No.14821 of 2004, the vacancy position in five subjects are dealt with and out of them biomedical is a course which is not offered by any college in that District. This application is rejected on the ground that there are adequate number of vacancies in the Colleges in the District in the four subjects where there are vacancies and the one subject where no college offers the course it is rejected on the ground of non-recruitment of senior level qualified faculty and non-availability of adequate computer laboratory. As already observed in the earlier paragraph 28

wherever the respondent is unable to cite vacancy as the reason for rejection some reasons are given to reject it. And since this appears in case after case, it is apparent that there is no application of mind. Even with regard to the vacancy position in the four courses mentioned above, in Biotechnology, there is only one vacancy and yet, the application was rejected on the ground of "adequate number" of vacancies.

(v) In W.P.No.14169 of 2004, the petitioner is in Erode District and it has applied for commencement of MBA. This is rejected on the ground that there are 64 vacancies in MBA in that District. It was submitted on behalf of the petitioner that no technical institution offers MBA in Erode. To this it was submitted on behalf of the respondent that MBA courses are also offered by Arts and Science Colleges and for commencement of the said courses also AICTE approval has to be obtained. But the respondent should be aware "of the ground reality" that student who wants to join a technical institution may not want to join the Arts and Science College and vice versa. Therefore, the vacancy position in Arts and Science College may not be relevant. This is another instance of non-application of mind.

(vi) In two matters W.P.Nos.20897 and 13783 of 2004, it appears that approval was granted by AICTE on 30-12-2003 and the State had rejected the NOC on 01-05-2004 and if the approval has already been granted by AICTE, the impugned order of rejection shall stand ignored and the AICTE is at liberty to consider the matter on the basis of the approval granted on 30-12-2003. In some matters what is challenged is the original order dated 30-12-2003 under which the State Government was pleased to reject the NOC. According to the learned counsel for the petitioners in these cases thereafter, fresh orders of rejection were not passed by the State Government. In any event if the inspection has been done by AICTE in these matters, the processing of the approval can be done independent of the State Government's NOC.

40. Therefore, though each and every case has been looked into, it is clear that the respondent has no intention of giving NOC at all. Therefore, the AICTE is directed to consider the inspection already made and arrive at an independent conclusion. This is subject to two conditions:
(a) There should be an application to AICTE, made within time and complete in all respects.
(b) The AICTE should have completed its inspection as per the interim directions.

41. Where these two conditions are not there, the above direction to AICTE will not apply, the petitioners may apply again for the next year in accordance with the regulations. The AICTE can take note of the statistics given in the impugned order regarding the vacancy position in the District in which the College is situate, with regard to the vacancy position in the total sanctioned intake in each course as well as the particular couse in the individual application, but if it is not relevant it may ignore it.

42. The observations made with regard to some of the individual writ petitions are only to show non-application of mind. They

shall not be construed as though this Court is granting its approval or recommending rejection in any particular case.

43. The time has come for AICTE to seriously consider the question whether it requires NOC from the State and particularly whether it requires NOC from the State in cases where the applications is by existing institutes? Though the Statutory Forms seems to require NOC it is not clear for what purpose the AICTE requires the State's assistance. The National Calendar also provides for the AICTE proceeding with the process of granting approval where NOC is not given before the cut off date in cases of increase in intake or commencement of new course. The AICTE might very well do some introspection in this regard if it intends to achieve its object. It should also specify the areas to which the State shall advert its attention before granting or rejecting the NOC. The State shall perform its role with all seriousness and responsibility. Otherwise our youth will suffer.

44. With these observations, the writ petitions are disposed of. The AICTE shall make an effort to pass orders on or before 10-09-2004. No costs. The connected miscellaneous petitions are closed.

Index:Yes
Internet:Yes
glp